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October 11, 1995

William F. Caton
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Notification of Permitted Written Ex Parte
Presentation in MM Docket No. 95-42

Dear Mr. Caton:

En Technology Corporation, by its attorneys and pursuant to Section 1.1206(a)(1) of the Commission's rules, hereby provides notice of a permitted written ex parte presentation to Commission officials regarding MM Docket No. 95-42.

Copies of the attached cover letter and FCC case are being sent today to the following FCC officials:

Robert Pepper, Mark Corbitt, and Donald Gips of the Office of Plans and Policy;

David Bennett, Gordon Godfrey, Bruce Romano, and Saul Shapiro of the Mass Media Bureau;

Jim Olson of the Office of General Counsel; and

George Harenberg of the Office of Engineering and Technology.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Michael K. Baker

enclosures

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October 11, 1995

VIA HAND DELIVERY

Robert M. Pepper
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Re: Permitted Written Ex Parte
Presentation in MM Docket No. 95-42

Dear Mr. Pepper:

On behalf of En Technology Corporation ("En"), this letter is to bring to your attention a 1984 decision by the Mass Media Bureau that bears significantly on issues raised in the Commission's MM Docket No. 95-42 notice of proposed rulemaking regarding digital data transmissions within the video portion of television signals.

As you may be aware, En has developed a broadcast data transmission system that enables the viewer of a television program to simultaneously receive and store high speed data transmissions on a computer. The data transmissions are seen by viewers of the programming as a small rectangle of "snow" across a portion of the picture. En's comments and reply comments urged the Commission to confirm that television broadcast station licensees may use En's innovative technology without prior Commission consent for data transmissions that are program-related (e.g., the transmission of computer software during a program discussing the software), intended for reception by the general public, and made within the boundaries of the NTSC signal.

In the attached case, *Petition for declaratory ruling, dated August 27, 1984, concerning the permissibility of transmitting computer data on a radio broadcast station's main channel*, 101 F.C.C.2d 301 (1984), the Bureau held that the use of a very similar technology by AM and FM broadcast licensees did not require any FCC authorization. Petitioner's technology allowed licensees to transmit "computer programs and text files utilizing audible signals over the main

Robert M. Pepper
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broadcast channel." *Id.* at 301. The Bureau reasoned that if the transmitted computer signals were intended for use by the public, they fall within the statutory definition of "broadcasting," and therefore that authorization for such transmissions is "contained presently within the radio broadcast station license."

This case provides added support for En's position that no prior FCC authorization (or even notification) is required for television licensees to use En's technology to transmit digital computer data to the public because such transmissions clearly meet the general definition of "broadcasting." Indeed, the only difference between the technology at issue in the above case and En's technology is that En's technology is used with a visual television signal rather than an aural radio signal. Given that both television and radio services fall within the definition of broadcasting, this distinction is legally irrelevant. Moreover, from the public's perspective, the use of En's technology -- with its rectangle of "snow" across a *portion* of the television screen - - would appear to disturb the underlying traditional program content less than the radio technology, which apparently involves replacement of the *entire* aural program content with audible data transmission tones.

I hope that this overlooked precedent assists you in adopting rules governing the transmission of ancillary digital data within the active portion of broadcast television signals. As required by Section 1.1206(a)(1) of the Commission's rules, two copies of this presentation have been submitted concurrently with this letter to the Secretary.

Respectfully submitted,



Michael K. Baker

enclosure

cc: Mark Corbitt (Office of Plans and Policy)
Donald Gips (Office of Plans and Policy)
David Bennett (Mass Media Bureau)
Bruce Romano (Mass Media Bureau)
Saul Shapiro (Mass Media Bureau)
Gordon Godfrey (Mass Media Bureau)
Jim Olson (Office of General Counsel)
George Harenberg (Office of Engineering and Technology)

Broadcasting, Computer Programs
Broadcasting, Definition

Petition for declaratory ruling concerning transmission of computer programs and data files on the main channel of radio b/c stations granted. If the computer signals are intended for use by the general public, they fall within the definition of "broadcasting" and can be transmitted by b/c stations without special FCC authorization.

—Michael L. Darland

Del. Auth. 85-06

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**
WASHINGTON, D.C. 20554

In the Matter of

Petition for declaratory ruling, dated August 27, 1984, concerning the permissibility of transmitting computer data on a radio broadcast station's main channel.

Adopted: Oct. 16, 1984; Released October 17, 1984

Mr. Michael L. Darland, President
The Microperipheral Corporation
2565 852nd Ave., N.E.
Redmond, Washington 98052

Dear Mr. Darland:

This is in response to your petition for declaratory ruling, dated August 27, 1984, concerning the permissibility of transmitting computer data on a radio broadcast station's main channel.

In your petition, you seek to determine whether the Commission would permit AM and FM radio broadcast licensees to transmit computer programs and text files utilizing audible signals over the main broadcast channel. For example, you envision that during a computer talk show an audible radio signal could be broadcast that provided an example of the computer program under discussion. Similarly, an advertiser or sponsor could provide a sample of a software program. These computer programs could be recorded and then be examined by the listener (receiver of the data) on a personal computer.

You indicate that this type of broadcasting is currently very popular in Europe. In view of the increased interest in personal computers in the United States, you believe that such a service would be in the public interest. Further, you indicate that it would be inefficient to provide this service on a subchannel or subcarrier since listeners would be required to purchase special receivers for the few minutes of data transmission a day that is contemplated. Therefore, much of the subchannel capability would be underutilized.

Although some staff doubts have previously been expressed as to the proper regulatory treatment of such programming, a review of the Communications Act and the Commission's rules reveals no bar to the broadcast of a program that includes the transmission of computer signals; provided, that such transmissions meet the general definition of broadcasting as set forth in Section 3 of the Communications Act. That is the "dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations." We believe that the transmission of computer programs, as you described, would be consistent with this definition. We also believe that such transmission would be consistent with the Commission's mandate under Section 303 of the Act to "(s)tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest."

In view of the fact that the transmission of computer programs and text files by audible tones, as you described above, would meet the statutory definition of broadcasting, we do not believe that a separate ruling or authorization is required. Such authority is contained presently within the radio broadcast station license.

Sincerely,

James C. McKinney
Chief, Mass Media Bureau